Supreme Court, U.S.
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No. 90-1395

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

ROBERT E. HARRELL, *et al.*,
Petitioners,

v.

THE UNIROYAL-GOODRICH TIRE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals, in granting summary judgment against petitioners in a Robinson-Patman Act price discrimination case, properly concluded that lessors lack standing to assert a claim that their tenant was the victim of price discrimination, where the tenant had previously litigated and settled the identical claim.

2. Whether the court of appeals properly dismissed petitioners' state law claim under *Carnegie-Mellon University v. Cohill*, 484 U.S. 343 (1988), when the claim that provided the sole basis for federal jurisdiction was properly disposed of on summary judgment.

RULE 29.1 STATEMENT

Respondent The Uniroyal-Goodrich Tire Company is wholly-owned by Companie Generale des Etablissements Michelin; it has an ownership interest, excluding one hundred percent ownership, in the following foreign companies: Compania Hulera Euzkadi, S.A.; Mobex Corporation; Working Organization Autoguma.

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit affirming the decision of the district court (Pet. App. A-3-9) is unpublished. The memorandum of decision is noted at 922 F.2d 830 (3d Cir. 1990). The opinion of the United States District Court for the judgment in favor of Respondent, The Uniroyal-Goodrich Tire Company, and dismissing the Harrells' claims (Pet. App. A-10-21) is unreported.

JURISDICTION OF SUPREME COURT

The judgment of the court of appeals was entered on December 5, 1990. The petition for a writ of certiorari was filed March 5, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) (1988).

JURISDICTION OF LOWER COURTS

Subject matter jurisdiction with respect to petitioners' Robinson-Patman Act claim was based on federal question jurisdiction, 28 U.S.C. § 1331 (1988). Petitioners' fraud claim was before the court on the basis of pendent jurisdiction.[1] Subject matter jurisdiction in the court of appeals was based on 28 U.S.C. § 1291 (1988).

STATEMENT

The petition for a writ of certiorari seeks this Court's review of a routine grant of summary judgment in an ordinary antitrust case. Petitioners, plaintiffs in the district court, seek to convert their failure to establish antitrust standing into an issue having constitutional dimensions by invoking phrases such as "due process" and "right to a jury trial" in their statement of questions presented.

Respondent, The Uniroyal-Goodrich Tire Company ("UGTC"), submits that the dismissal of petitioners' claim for lack of antitrust standing was clearly correct, grounded in well established principles of law, and not

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[1] Petitioners erroneously assert that subject matter jurisdiction in the district court also was predicated on diversity of citizenship, 28 U.S.C. § 1332 (1988) (Pet. at 2). The complaint dismissed by the district court did not allege diversity jurisdiction nor did it demonstrate the existence of diversity. In response to UGTC's motion to dismiss plaintiffs' fraud claim, plaintiffs moved to amend their complaint to allege facts sufficient to establish diversity jurisdiction and to replead their fraud claim. However, the district court denied plaintiffs' motion (Pet. App. A-19-21), and the court of appeals affirmed that denial (Pet. App. A-8-9).

in conflict with any prior decisions of this Court. There are no conflicts among the circuits on this question and the petition asserts none. No novel or important issue of law is involved in this petition. The petition should be denied.

A. Background

For a number of years, UGTC and its predecessor sold tires to Crawford Tire Co. ("Crawford Tire"), a tire retailer in Pittsburgh, Pennsylvania. Petitioner Robert E. Harrell was the sole shareholder of Crawford Tire. Petitioners Robert E. and Barbara J. Harrell owned the building in which Crawford Tire operated and leased that building to Crawford Tire. In early 1987, Crawford Tire refused to renew its distributor agreement with UGTC. At the time, Crawford Tire owed UGTC over $14,000 for tires that UGTC had delivered to Crawford Tire.

B. The Present Lawsuit

In May, 1987, Crawford Tire sued UGTC and two tire dealers in the Pittsburgh area, Pace Membership Warehouse, Inc. ("Pace") and Tire America, Inc. ("Tire America") in the U.S. District Court for the Western District of Pennsylvania. Crawford Tire alleged violations of the Robinson-Patman Act, 15 U.S.C. § 13 (1988), by UGTC, Pace, and Tire America. Crawford Tire's allegations concerned UGTC's so-called "volume discount" program. UGTC, like all tire companies, offered all of its distributors slightly lower prices for purchases of tires in larger volumes. This discount was uniformly available to all tire purchasers in the Pittsburgh area, including Crawford Tire. Crawford Tire contended that, as a result of UGTC's volume discount program, UGTC sold tires to Pace and Tire America (and that Pace and Tire America induced such sales) at lower prices than UGTC sold tires to Crawford Tire, and that these circumstances

somehow constituted unlawful price discrimination within the meaning of the Robinson-Patman Act.

Crawford Tire also pleaded a state law fraud claim against UGTC alone, alleging, in essence, that UGTC had somehow "promised" to insulate Crawford Tire from competition. Petitioners, the Harrells, were also named as plaintiffs in both the antitrust and state law claims.

C. Crawford Tire's Liquidation

In September 1987, Crawford Tire filed a liquidating petition under Chapter 7 of the Bankruptcy Code. In early 1988, Crawford Tire, through its trustee, reached a settlement of all of its claims against all defendants in this case, including UGTC. Under that settlement agreement UGTC paid over $44,000 into Crawford Tire's estate and in addition released claims UGTC possessed against the estate which totalled over $15,000. The settlement was approved by the bankruptcy court and affirmed by the district court. As a result, all of Crawford Tire's claims were dismissed with prejudice.

Following the dismissal of Crawford Tire's claims, all that remained of this case were the tag-along claims of the Harrells. The Harrells, as the landlords of Crawford Tire, sought to pursue against UGTC the same claim that Crawford Tire had already litigated and settled.

D. The Opinion of the District Court

In April 1990, the district court granted UGTC's motion for summary judgment against the Harrells on the ground that they lacked antitrust standing, either as shareholders or landlords of Crawford Tire, to maintain a Robinson-Patman Act claim against UGTC. First, the court found that the Harrells' claim was "wholly derivative of the Crawford claim against UGTC which has been settled" and that the damages the Harrells sought were "duplicative and not recoverable . . . ." (Pet. App. at A-16.) Second, the court found that the Harrells were

neither competitors or consumers in the relevant market. Further, the court recognized that their alleged injury, lost rent, was "merely tangentially related to an alleged antitrust violation." (Pet. App. A-17.) Applying the principles of *Associated General Contractors v. California State Council of Carpenters*, 459 U.S. 519 (1983), the court concluded that the Harrells were not appropriate antitrust plaintiffs and held that they lacked antitrust standing. (Pet. App. A-17.)[2]

Finding no viable federal claim, the district court properly exercised its discretion to dismiss the Harrells' pendent state law claim, citing *Carnegie-Mellon University v. Cohill*, 484 U.S. 343 (1988). (Pet. App. A-19.) The district court also denied the Harrells' motion for leave to amend their complaint on the ground that the proposed amendment was futile. (Pet. App. A-20-21.)

E. The Opinion of the Court of Appeals

On December 5, 1990, the court of appeals affirmed the decision of the district court. The court acknowledged that over 30 years ago it had held that a lessor's property interest was too remote to confer antitrust standing. (Pet. App. A-7.)[3] It then carefully considered and rejected the contention the Harrells repeat here—namely, that *Perkins v. Standard Oil Co.*, 395 U.S. 642 (1969), confers standing on them to pursue price discrimination claims against UGTC. The court noted that the plaintiff in *Perkins* was the principal and direct victim of the price discrimination practiced by Standard. (Pet. App. A-7.) In this case, the court found the principal

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[2] Likewise, the court denied Robert Harrell standing as the shareholder of Crawford Tire because the only harm alleged was the price discrimination directed at Crawford Tire, not at Mr. Harrell as owner. (Pet. App. A-18.) The Harrells do not contest that ruling.

[3] The court cited its prior decisions in *Melrose Realty Co. v. Loew's, Inc.*, 234 F.2d 518, 519 (3d Cir.), *cert. denied*, 352 U.S. 890 (1956), and *Harrison v. Paramount Pictures, Inc.*, 115 F. Supp. 312 (E.D. Pa. 1953), *aff'd*, 211 F.2d 405 (3d Cir.) (per curiam), *cert. denied*, 348 U.S. 828 (1954).

victim of any discrimination was Crawford Tire and that Crawford Tire had litigated and settled its claim. Thus, the court found no basis to conclude that the Harrells had an "independent cause of action to allege the same price discrimination and to recover for injuries tangentially caused them by Crawford's economic demise," and affirmed the grant of summary judgment. (Pet. App. A-7-8.)[4]

REASONS FOR DENYING THE WRIT

The opinion of the Third Circuit stands for the wholly unexceptional proposition that lessors lack standing to pursue Robinson-Patman Act claims where the lessor's tenant was the sole victim of the alleged price discrimination and where the tenant has pursued and settled the identical claim. The Third Circuit properly applied the law to the particular facts of this case and reached a plainly correct result. The decision does not conflict with any decision of this Court or of any other court of appeals. The petition should be denied.

I. THE QUESTIONS PRESENTED WERE NEITHER RAISED NOR DECIDED BELOW

The Questions Presented for Review by petitioners (Pet. at i) are whether the decision of the court of appeals deprives petitioners of their constitutional rights by (i) failing to grant petitioners antitrust standing, and (ii) dismissing their claims by summary judgment. Petitioners did not raise these constitutional challenges in the district court or in the court of appeals, and the Third Circuit did not decide either of the questions presented in the petition. Absent consideration by the Third Circuit of these contentions, no reason exists for certiorari review. *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 362 (1981) (refusing to review questions not

[4] The court of appeals also affirmed the district court's dismissal of the Harrells' pendent fraud claim and denial of leave to amend. (Pet. App. at A-8-9.)

raised in court of appeals); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970); *Lawn v. United States*, 355 U.S. 339, 362-63 n.16 (1958).

II. THE PETITION PRESENTS NO NOVEL OR IMPORTANT QUESTION

No novel or important questions are raised by the decision below. As a matter of antitrust law, the court of appeals' refusal to extend antitrust standing to parties such as lessors seeking damages that are wholly duplicative of claims of more proximate victims finds support in this Court's decisions. *See Kansas v. Utilicorp United, Inc.*, 110 S. Ct. 2807, 2815 (1990); *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). Likewise, as the Harrells were neither competitors nor consumers in the relevant market, they were not "within the area of the economy . . . endangered by the breakdown of competitive conditions" and lack standing under the principles stated in *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 481 (1982), and *Associated General Contractors v. California Council of Carpenters*, 459 U.S. 519 (1983) (where plaintiffs were not engaged in a business directly affected by the alleged anticompetitive conduct, their claim must fail as beyond the scope of the intended reach of the antitrust laws). Thus, the decision below is solidly rooted in this Court's antitrust jurisprudence.

The Harrells' contention that *Perkins v. Standard Oil Co.*, 395 U.S. 642 (1969), "held that landlords may recover for injuries caused by discrimination to their business tenants" (Pet. at 8), is flatly wrong. The question this Court faced in *Perkins* was whether buyers of goods two levels of distribution after the alleged discrimination (so-called "fourth-line injury") were too remote from the discrimination to recover damages under the Robinson-Patman Act. *Perkins*, 395 U.S. at 646-47, *see Texaco, Inc. v. Hasbrouck*, 110 S. Ct. 2535, 2548 (1990).

Perkins was the operator of certain service stations that were the victims of the fourth-line injury and also leased land to those service stations. *Perkins*, 395 U.S. at 645, 649.

This Court ruled that fourth-line injury, where provable, could be recovered in a Robinson-Patman Act case. With regard to Perkins' damage claims, the Court remarked "Perkins was no mere innocent bystander; he was the principal victim of the price discrimination practiced by Standard." *Id.* at 649. As the principal victim, Perkins was entitled to bring suit and "entitled to present evidence of all his losses to the jury." *Id.* at 650. The Court further noted, regarding Perkins' damages as landlord, that "[t]he record in this case does not show that the jury included an award for any of these minor items in its judgment." *Id.*

Perkins in no way "held" that landlords have standing to pursue the antitrust claims of their tenants. In particular *Perkins* in no way suggests that lessors can assert duplicative claims where the primary victim of any discrimination has already asserted and settled its claim.

The opinion below correctly distinguished *Perkins*. (Pet. App. A-7-8.) The court of appeals noted that in *Perkins*, the plaintiff was a consumer in the relevant market and "the principal victim of the price discrimination practice." (Pet. App. at A-7.) In this case, on the other hand, the denial of antitrust standing rests squarely on the explicit factual findings that the Harrells were neither competitors nor consumers in the relevant market; that Crawford Tire, not the Harrells, was the primary victim of any discrimination; and that the Harrells' injury was wholly derivative and duplicative of Crawford's claim. (Pet. App. A-7, A-16.) There is no ground to review these factual findings, which are dispositive here. *NCAA v. Board of Regents*, 468 U.S. 85, 98 n.15 (1984); *United States v. Doe*, 465 U.S. 605, 613-

14 (1984); *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *Branti v. Finkel*, 445 U.S. 507, 512 n.6 (1980).

It is significant that lower court decisions have consistently rejected *Perkins* as a basis either to permit landlords to recover for wrongs practiced against their lessees, *see Alford v. Frontier Enterprises*, 599 F.2d 483 (1st Cir. 1979), or to convert economic injury into antitrust injury, *see Program Engineering, Inc. v. Triangle Publications, Inc.*, 634 F.2d 1188, 1191 (9th Cir. 1981); *Engine Specialties, Inc. v. Bombardier Ltd.*, 605 F.2d 1, 18 n.25 (1st Cir. 1979), *cert. denied*, 446 U.S. 983 (1980); *D.L. Auld Co. v. Park Electrochem. Corp.*, 651 F. Supp. 582, 586-87 (E.D.N.Y. 1986). It is thus clear that the federal courts have uniformly rejected the strained interpretation of *Perkins* petitioners offer here and that no conflict or ambiguity exists in the lower courts on this point.

III. THERE IS NO MERIT TO PETITIONERS' CONTENTION THAT DISMISSAL OF THEIR CLAIMS BY SUMMARY JUDGMENT DEPRIVES THEM OF DUE PROCESS OF LAW AND THE RIGHT TO TRIAL BY JURY

Almost a century ago the Court sustained the validity of the summary judgment procedure in the face of these exact constitutional challenges in *Fidelity & Deposit Co. v. United States*, 187 U.S. 315, 319-21 (1902). Nothing has happened since to suggest a need for the Court to reevaluate its decision. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 336 (1979).

The district court properly dismissed the Harrells' pendent fraud claim under *Carnegie-Mellon University v. Cohill*, 489 U.S. 343 (1988). In the early stages of this litigation the district court dismissed the Harrells' federal claim leaving only their fraud claim before the court solely on the basis of pendent jurisdiction. (Pet. App. A-19.) In this situation, as this Court stated in

Carnegie-Mellon, it is within the district court's discretion whether to retain the pendent claim or to dismiss it for lack of subject matter jurisdiction. 484 U.S. at 350. Here, the district court dismissed the Harrells' pendent fraud claim. (Pet. App. A-19.) Finding no abuse of discretion, and that the Harrells pointed to none, the court of appeals affirmed. (Pet. App. A-8.)

The district court's denial of leave to amend the Harrells' complaint on the grounds of futility was also clearly correct. *Foman v. Davis*, 371 U.S. 178, 182 (1962). Petitioners' request that the Court decide if "there is an issue of fact whether the Harrells were defrauded by Uniroyal-Goodrich" (Pet. 14.). Both courts below found that the Harrells had not properly alleged fraud by UGTC against them as landlords. (Pet. App. A-8-9, A-20-21.) Review of this determination is unwarranted and unnecessary. *Texas v. Mead*, 465 U.S. 1041, 1043 (1984); *NCAA, supra; Doe, supra; Rogers, supra; United States v. Johnston*, 268 U.S. 220, 227 (1925).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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